

IN THE DISTRICT COURT OF THE STATE OF UTAH, IN AND FOR THE COUNTY  
OF UTAH.

PROVO RESERVOIR COMPANY,

Plaintiff,

-vs-

PROVO CITY, et al,

Defendants.

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Comes now the defendant, Utah Power & Light Company,  
by John F. MacLane, Esquire, and Story & Steigmeier, Esquires, its  
attorneys, and moves the Court to modify the order heretofore en-  
tered in the above entitled cause in respect to the distribution of  
the waters of Provo River, pending the entry of final decree here-  
in, *and to the tentative decision heretofore made by the Court,* in so far as the same directs the distribution to the plain-  
tiff, Provo Reservoir Company, as successor in interest of The  
Blue Cliff Canal Company, of forty-six second feet of the waters of  
Provo River as a Class A right, so as to make the distribution of  
such waters to the plaintiff subject and subordinate at all times  
to the rights of this defendant in and to the use of the waters  
of said river, as now or which may be hereafter determined in said  
action, and as ground for such motion shows:

FIRST: That, as appears from the complaint in said ac-  
tion, the evidence introduced, and the admissions of counsel made  
during the trial of this cause, the respective rights of the plain-  
tiff's predecessor-in-interest, The Blue Cliff Canal Company, and  
this defendant's predecessor-in-interest, The Telluride Power  
Company, in and to the use of the waters of said river, were fin-  
ally adjudicated and determined, long prior to the commencement  
of this action, in that certain cause lately pending in this Court  
wherein Provo City, et al, were plaintiffs and the Telluride Pow-  
er & Transmission Company, et al, were defendants, and wherein it

was adjudged and decreed that the forty-six second feet of the waters of said river so claimed by the plaintiffs said predecessor in-interest, was a Class B right and subject to the rights of this defendant's said predecessor-in-interest, The Telluride Power Company, in and to the use of the waters of said river.

SECOND: That the said order so made in this cause, directing that the said forty-six second feet of the waters of said river be distributed to the plaintiff as a Class A right is inconsistent with and subversive of the said former decree of this Court and in violation of the rights of this defendant under said decree in that by raising the right so claimed by the plaintiff to a Class A right, of equal dignity and priority with the rights of this defendant, the same is entitled to a pro rata distribution of the waters of said river at such times as there is an insufficient amount of water flowing in said river to satisfy the said rights of the plaintiff and this defendant in full, whereas under said former decree of this Court, this defendant is entitled to have its right in and to the use of the waters of said river satisfied in full before any of the waters of said river are distributed to the plaintiff under its right to the use of forty-six second feet of said waters hereinbefore mentioned; and, further, as more fully appears from the affidavit of D. L. Brundige filed herewith and by reference made a part of this motion, the waters normally flowing in said Provo River, are wholly insufficient to satisfy the said right of the plaintiff and of this defendant, as tentatively determined by the said order of this Court, and in consequence of the said right of the plaintiff being classified by said order as a Class A right, the Commissioner charged with the duty of distributing the waters of said river has required and will continue to require this defendant, so long as such shortage of water exists to pro rate such shortage with the plaintiff to the great and irreparable damage of this defendant.

WHEREFORE, etc.

John F. Wilson  
For Defendant

Attorneys for defendant,  
Utah Power & Light Company.